UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DALMATIA IMPORT GROUP, INC., Plaintiff, v. FOODMATCH, INC., LANCASTER FINE FOODS, INC., EARTH PRIDE ORGANICS, LLC, PHILIP MELDRUM, and MICHAEL S. THOMPSON, Defendants.	Case No. 1:16-cv-933-GBD JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiff Dalmatia Import Group, Inc. ("Plaintiff" or "Dalmatia") brings this action against Defendants FoodMatch, Inc. ("FoodMatch"), Earth Pride Organics, LLC ("Earth Pride"), Lancaster Fine Foods, Inc. ("Lancaster"), Philip Meldrum, and Michael S. Thompson for injunctive relief and monetary damages, and on information and belief alleges as follows:

NATURE OF THE ACTION

1. Dalmatia's claims arise from Defendants' theft of Dalmatia's intellectual property for their own commercial advantage. Defendants FoodMatch and Phillip Meldrum conspired with Defendants Lancaster and Michael S. Thompson to use Dalmatia's proprietary fruit spread recipes and production processes to launch a copycat line of fruit spreads under FoodMatch's Divina brand. In advance of FoodMatch's product launch, the Defendants conspired to suppress demand for Dalmatia's fig spread products by saturating the market with many tens of thousands of jars of **counterfeit** DALMATIA fig spread products without Dalmatia's knowledge or authorization. All of these actions breached FoodMatch's and Lancaster's respective contracts

with Dalmatia. Dalmatia has brought this action to stop Defendants' unlawful use of its intellectual property and to recover its damages.

2. Plaintiff Dalmatia is a specialty food company that maintains a unique product line inspired by the agriculture and culture of Dalmatia – a district of Croatia on its Adriatic Coast. Dalmatia is the innovator of "fig spread," a food item that has received widespread success and acclaim from consumers, and won numerous industry awards. Based on more than 15 years of dedicated effort building its brand, expanding its product line and promoting "fig spread" as a mainstay in consumers' kitchens, Dalmatia established its status as the leading player in the fig spread market.

3. Dalmatia's considerable success is tied directly to its three best-selling products: "Original Fig Spread, "Orange Fig Spread" and "Sour Cherry Spread." Dalmatia spent years perfecting the recipes and production processes responsible for the unique flavor, texture, consistency and appearance of its spreads. Dalmatia has always maintained the secrecy of its proprietary recipes and production processes, taking substantial measures to safeguard this information.

4. Defendant FoodMatch is a distributor specializing in Mediterranean food items. Dalmatia, in an attempt to further expand its business, entered into an agreement with FoodMatch in 2006 (the "Distribution Agreement"), pursuant to which FoodMatch acted as Dalmatia's exclusive distributor in the United States and used its channels of distribution to increase the scope of Dalmatia's footprint.

5. In October 2015, after Dalmatia properly notified FoodMatch that it was terminating the Distribution Agreement as of the year's end, FoodMatch decided to launch its own "Divina" brand versions of Dalmatia's fig spread products. While the Distribution

Agreement still was in effect, FoodMatch began developing, manufacturing and promoting Divina fig, orange fig and sour cherry spreads for sale in the United States.

6. FoodMatch hired Lancaster, Dalmatia's fig spread manufacturer in the United States, to create FoodMatch's fig and orange fig spreads. As Dalmatia's contract manufacturer for more than seven years, Lancaster had full knowledge of Dalmatia's proprietary recipes and manufacturing processes – information it was obligated to keep confidential and to use only for Dalmatia's benefit. Lancaster used that proprietary knowledge to create the fig and orange fig spread recipes sold by FoodMatch under the Divina brand in competition with Plaintiff's DALMATIA fig spread products.

7. As a result of this theft, FoodMatch was able to achieve with its Divina fig and orange fig spreads the distinctive characteristics of Dalmatia's fig spread – characteristics that no other company has been able to replicate since Dalmatia introduced its product. With Lancaster's assistance, FoodMatch began to sell the "Divina" products in January, 2016, immediately after the Distribution Agreement between Foodmatch and Dalmatia had expired and was able to launch the products nationwide within weeks thereafter.

8. The Defendants' willful disregard for Dalmatia's rights did not end with their misappropriation of trade secrets and willful breach of their non-competition agreements. Defendants also conspired to manufacture and sell Dalmatia's fig spread, using Dalmatia's DALMATIA trade mark and trade dress, without Dalmatia's knowledge or authorization.

9. Lancaster manufactured and sold to FoodMatch, and FoodMatch then distributed to wholesalers and retailers, counterfeit DALMATIA fig spread products appearing identical to Dalmatia's genuine DALMATIA fig spread products. These counterfeit DALMATIA products include batches of fig spread manufactured by Lancaster that Dalmatia had rejected due to poor

quality as well as batches that Lancaster produced after Dalmatia prohibited it from continuing to manufacture DALMATIA products and which Dalmatia never approved or authorized.

10. These counterfeit DALMATIA products are being sold in vast quantities by retailers from coast to coast, causing irreparable harm to Dalmatia's reputation, brand and sales and deceiving consumers.

11. To make matters worse, FoodMatch has bombarded long-time Dalmatia customers with patently false information about Dalmatia, including communicating to buyers that Dalmatia is exiting the business. In so doing, FoodMatch targeted Dalmatia's customers to push Dalmatia's fig spread products off the shelves of retailers throughout the country and replace them with unlawful Divina-brand fig spread products.

12. Dalmatia is facing extinction by having to compete with massive quantities of counterfeit DALMATIA products which, unless emergency relief is granted, will remain on retailers' shelves for many months (as the product has a three year shelf life) and with the unlawful Divina-brand fig spread products that were created in blatant violation of Lancaster's and FoodMatch's non-compete agreements and which use the very proprietary recipes and production processes that Dalmatia spent over fifteen years developing and protecting. Justice mandates that Defendants be stopped immediately from further sabotaging, usurping and destroying Dalmatia's business.

13. Accordingly, Dalmatia has commenced this action against Defendants seeking injunctive relief, compensatory damages and punitive damages for Defendants' misappropriation of Dalmatia's trade secrets, unfair business practices, breach of contract, tortious interference with contract, trademark infringement, counterfeiting, and civil racketeering.

THE PARTIES

14. Plaintiff Dalmatia Import Group, Inc. is a corporation organized and existing under the laws of Florida, with its principal place of business located at 28 West Flager Street, Miami, Florida 33130.

15. Defendant FoodMatch, Inc. is a corporation organized and existing under the laws of New York, with its principal place of business located at 575 Eighth Avenue, New York, New York 10018.

16. Defendant Philip Meldrum is an individual domiciled in New York, New York. Mr. Meldrum is the President of FoodMatch. Defendant Meldrum oversaw, directed and was the moving force behind the unlawful conduct alleged in this First Amended Complaint.

17. Defendant Lancaster Fine Foods, Inc. is a corporation organized and existing under the laws of Pennsylvania, with a principal place of business located at 2320 Norman Road, Lancaster, Pennsylvania 17601. Upon information and belief, Lancaster is a subsidiary of Earth Pride.

18. Defendant Earth Pride Organics, LLC is a limited liability company organized and existing under the laws of Pennsylvania, with a principal place of business located at 2320 Norman Road, Lancaster, Pennsylvania 17601. Upon information and belief, Earth Pride is Lancaster's parent company.

19. Defendant Michael S. Thompson is an individual domiciled in Lititz, Pennsylvania. Mr. Thompson is CEO of Earth Pride and President of Lancaster. Defendant Thompson oversaw, directed and was the moving force behind the unlawful conduct alleged in this First Amended Complaint.

JURISDICTION AND VENUE

20. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1). There is complete diversity of citizenship between Dalmatia and the Defendants, and the amount in controversy exceeds $75,000, exclusive of interest and costs.

21. This Court also has subject matter jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1367. Plaintiff asserts causes of action arising under the federal Lanham Act, 15 U.S.C § 1114 and The Racketeering Influenced And Corrupt Organizations Act, 18 U.S.C. § 1962(c) and (d)), and its state law claims are part of the same case or controversy.

22. This Court has personal jurisdiction over FoodMatch because FoodMatch is a corporation organized under the laws of New York, and has its principal place of business in New York.

23. This Court has personal jurisdiction over Meldrum because he is domiciled and works in New York.

24. This Court has specific personal jurisdiction over the Lancaster, Earth Pride, and Thompson at least because Plaintiff's claims arise from and are directly related to their sale of products to FoodMatch in New York, their activities directed toward New York in their conspiracy with FoodMatch and Meldrum, and, upon information and belief, their placement in the stream of commerce of products that were ultimately sold in New York. The Court also has general person jurisdiction over Lancaster and Earth Pride because they have continuously and systematically engaged in business in New York.

25. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) because a substantial part of the events giving rise to the claims occurred in this district.

FACTUAL BACKGROUND

I. Dalmatia Builds Its Business And Innovates The Fig Spread Market In The United States.

26. Dalmatia is a company co-founded by Neb Chupin ("Mr. Chupin") and Maia Magee ("Ms. Magee") in 1994. Dalmatia's origins are in Croatia – indeed the Dalmatia region of Croatia – where Mr. Chupin grew up and Ms. Magee studied as a teenager. Mr. Chupin's grandfather dedicated his life to Croatian agriculture and was the inspiration behind Dalmatia, which was formed with the intention of supporting local economies, encouraging organic farming, and honoring the Dalmatian way of life. Initially, the company was dedicated to importing Croatian chocolate, olives, olive tapenades and extra virgin olive oil.

27. In early summer 2000, Mr. Chupin and Ms. Magee were traveling in Croatia when they encountered a jar of fig preserves that reminded Mr. Chupin of his grandfather's fig preserves he enjoyed as a child. They decided to refocus the company towards creating a new version of Croatian fig preserves and named the product "fig spread."

28. Mr. Chupin and Ms. Magee worked with and paid a food technologist to create the perfect recipe and production process for what is now known as Dalmatia Original Fig Spread. Countless hours were spent creating batches of early versions of the Original Fig Spread in small cookers, adjusting flavor nuances and perfecting texture, consistency and visual appeal, before settling on Dalmatia's first commercially-released spread.

29. In late 2000, Dalmatia introduced the Original Fig Spread in the United States. At the time, it was the only fig spread on the market, effectively inventing a new product name – fig spread – and a new category and niche in cheese departments across the country. It was an instant success.

30. Based on the popularity of the Original Fig Spread, Dalmatia soon expanded its line of spreads to include Orange Fig Spread and Sour Cherry Spread, among others. Developing each of these spreads required many ingredient and process modifications to reach their respectively unique flavors, texture, consistency and appearance.

31. Dalmatia's spreads have gained widespread success and acclaim with consumers, and have won numerous industry awards. For example, the Original Fig Spread won first place for "Best Salsa, Sauce and Condiment" at the 2006 Americas Food and Beverage Show and Conference, and won the award for "Outstanding Shelf Stable Food Service Product" at the 2010 Summer Fancy Food Show. Orange Fig Spread won the 2004 NASFT Product Award for "Outstanding Jam, Preserve, Spread or Sweet Topping."

32. In the more than 15 years since Dalmatia launched its fig spread in the United States, no other manufacturer of fig preserves has come close to replicating the unique characteristics of Dalmatia's products, which make it particularly well-suited for use as a cheese condiment.

II. Dalmatia Protects Its Brand With Registered Trademarks.

33. To protect its brand, Dalmatia secured federal trademark registrations. Dalmatia owns an incontestable federal registration for DALMATIA for "dried fig spread." (Reg. No. 2,918,383.)

34. Dalmatia also owns an incontestable federal registration for the jar configuration in which the product is sold also for "dried fig spread." (Reg. No. 3,667,176.)

35. The protected configuration is shown below:

DALMATIA®
FIG SPREAD
ORIGINAL

36. Dalmatia is vigilant in monitoring its manufacturers to ensure that products sold under the DALMATIA brand meet Dalmatia's high quality standards. Dalmatia regularly evaluates samples produced by its manufacturers and objects, or refuses to purchase products, when the samples do not meet Dalmatia's standards.

III. Dalmatia's Recipes and Production Processes Are Trade Secrets.

37. Dalmatia's spreads have achieved this considerable success by virtue of their unique characteristics, which result through a combination of their recipes and production processes. The proprietary recipes are expressed in lists and percentages of ingredients. The production processes consist of particular steps for the preparation, mixing, and cooking of the ingredients – in a particular order – as well as parameters, such as cooking time, temperature and Brix levels at various stages of the process.

38. The Dalmatia Original Fig Spread, Orange Fig Spread and Sour Cherry Spread that are currently on the market reflect Dalmatia's proprietary recipes and production processes, which Dalmatia does not, and never has, made public.

39. Dalmatia has always been diligent in its efforts to maintain the secrecy of its proprietary information. Dalmatia only shares its recipes and production processes with parties with whom Dalmatia has entered into a non-disclosure agreement, and even then, limits disclosures to the extent necessary and designates written disclosures as "confidential."

IV. Dalmatia Enters Into a Distribution Agreement With FoodMatch.

40. In or around spring 2005, Dalmatia sought to expand its distribution. Dalmatia approached FoodMatch, a distributor of a wide array of antipasto items. Dalmatia believed the Original Fig Spread would be a unique and new complement to FoodMatch's product line, which, at the time, did not include any sweet items.

41. On or around December 22, 2006, Dalmatia entered the Distribution Agreement with FoodMatch. Pursuant to the Distribution Agreement, FoodMatch obtained the exclusive right to distribute Dalmatia's food products in the United States.

42. As part of the Distribution Agreement, FoodMatch agreed not to sell or promote any competitive products similar to Dalmatia's. Paragraph 1(c) of the Distribution Agreement provides, in relevant part, that "FoodMatch agrees that during the Term of this Agreement, it will not sell or promote in the Territory any competitive products that are similar to the Products,[1] or that originate or are held out as being from Croatia." Similarly, Paragraph 1(e) of the Distribution Agreement, which has no time limitation, provides that "FoodMatch agrees that it will not manufacture, purchase, or sell products in the Territory[2] that directly compete with the products."

43. The Distribution Agreement also contained a clause to protect Dalmatia's intellectual property rights, including Dalmatia's "trademarks, service marks, copyrights, trade names, logos, symbols" (referred to in the Distribution Agreement as the "Marks"), as well as "proprietary rights used in or by Dalmatia in connection with the manufacture, marketing, sale

[1] "Products" is defined as "certain branded food products of Dalmatia," as set forth as an exhibit to the Distribution Agreement.

[2] "Territory" is defined as the United States and U.S. Territories. Distribution Agreement at ¶ 1(a).

and distribution of the Products," from any improper or unauthorized use by FoodMatch. (Distribution Agreement at ¶ 7(a).)

44. Pursuant to the Distribution Agreement, FoodMatch agreed that the Marks and Dalmatia's proprietary rights used in connection with the manufacture, marketing, sale and distribution of the Products are the exclusive property of Dalmatia. (*Id.*)

45. Pursuant to the Distribution Agreement, Dalmatia granted to FoodMatch "a limited, revocable license within the Territory during the term of [the] Agreement for the ancillary use of the Marks as pre-approved by Dalmatia in writing in connection with any sales, marketing and distribution activities of FoodMatch with respect to the Products." (Distribution Agreement at ¶ 7(b).)

46. The Distribution Agreement further provided that FoodMatch shall not "perform any act which would be inconsistent with any of Dalmatia's Marks or Intellectual Property or Dalmatia's ownership thereof." (Distribution Agreement at ¶ 7(c).)

V. Dalmatia and FoodMatch Enter Into a Non-Disclosure Agreement To Protect Dalmatia's Proprietary Recipes and Production Processes.

47. In or about May 2007, Dalmatia and FoodMatch entered into a Non-Disclosure Agreement (the "FoodMatch Non-Disclosure Agreement"). It provides explicit protections for Dalmatia's proprietary recipes and production processes. (FoodMatch Non-Disclosure Agreement at ¶ 1(a), (b).)

48. "Information," as defined in the FoodMatch Non-Disclosure Agreement, includes Dalmatia's "information, recipes, ingredients, formula, methods, lists, reports or presentations" relating to Dalmatia's products. (FoodMatch Non-Disclosure Agreement at ¶ 1(a).)

49. The FoodMatch Non-Disclosure Agreement's "Objective" is clearly defined:

> WHEREAS the Recipient [FoodMatch] shall evaluate and use such information in order to share it with certain Buyers who request and/or require such information

> in connection with their purchase of the Food Products from the Recipient for resale by the Buyers to consumers . . . .

50. The FoodMatch Non-Disclosure Agreement further provides that FoodMatch may disclose Dalmatia's confidential information to buyers only after obtaining a similar non-disclosure agreement from the buyers. (FoodMatch Non-Disclosure Agreement at ¶ 1(b).)

51. FoodMatch also explicitly recognized "the value and importance to [Dalmatia] of such proprietary information and the need to keep it strictly confidential." (FoodMatch Non-Disclosure Agreement at p. 1.)

52. FoodMatch also agreed that it would use Dalmatia's confidential information "solely in connection with the Objective, and ***for no other purpose whatsoever***." (FoodMatch Non-Disclosure Agreement at ¶ 3 (emphasis added).)

53. The FoodMatch Non-Disclosure Agreement provided that it:

> "shall remain in force for a period of all times while the Recipient is an authorized distributor of Discloser's Food Products and for three (3) years following the termination of any distributor relationship between the parties."

(FoodMatch Non-Disclosure Agreement at ¶ 5(a).)

VI. Dalmatia Begins Working With Lancaster's Predecessor and Enters into a Non-Disclosure Agreement.

54. In order to bring its products to market, Dalmatia enters into written agreements with manufacturers to produce its products. From about September 2008 to October 2015, Lancaster manufactured fig spread for Dalmatia.

55. Prior to Dalmatia's relationship with Lancaster, it began discussions with Lancaster's predecessor, Beanies of Lancaster, Inc. ("Beanies"), for Beanies to manufacture and supply Dalmatia's fig spread using Dalmatia's recipe.

56. Beginning in about May 2007, Beanies and Dalmatia took initial steps, over a period of more than a year, toward establishing their business relationship. This included

purchasing new equipment, retooling existing equipment, research and development, test production, sourcing ingredients and materials, and working out pricing analysis for production costs.

57. Recognizing that their contemplated business relationship would require Dalmatia to disclose confidential information about its recipes and manufacturing processes, Dalmatia and Beanies entered into a non-disclosure agreement dated May 21, 2007 (the "Beanies Non-Disclosure Agreement").

58. The Beanies Non-Disclosure Agreement provides explicit protections for Dalmatia's proprietary recipes and production processes.

59. Pursuant to the Beanies Non-Disclosure Agreement, Beanies agreed that it would use Dalmatia's confidential information including "recipe specifics" "in order to copackage (produce, package, label, etc.) solely for [Dalmatia]" and for no other purpose. (Beanies Non-Disclosure Agreement at p. 1 and ¶ 3.)

60. Beanies further agreed that it would keep Dalmatia's information confidential and not disclose it to any third party. (Beanies Non-Disclosure Agreement ¶ 1(b).)

61. The Beanies Non-Disclosure Agreement provided that it would remain in force indefinitely. (Beanies Non-Disclosure Agreement ¶ 4(a).)

VII. Dalmatia Teaches Lancaster How To Make Dalmatia's Proprietary Fig Spread.

62. In June 2007, Dalmatia provided to Beanies' product developer, Matthew Hunt, Dalmatia's confidential, proprietary recipe for fig spread and orange fig spread.

63. In about September 2008, Beanies and Dalmatia began a research and development phase in which Mr. Hunt made test batches of Dalmatia's fig spread using Dalmatia's proprietary recipe. The goal of the research and development was for Beanies to learn how to make fig spread meeting Dalmatia's specifications.

64. Even with the recipe in hand, Beanies had difficulty replicating Dalmatia's fig spread, particularly in matching its consistency and taste. Over the course of about eleven months, Beanies made test batch after test batch.

65. Throughout the research and development phase, and even after Lancaster began manufacturing Dalmatia's fig spread, Dalmatia provided confidential information about its ingredients and manufacturing methods to help Beanies and Lancaster learn to make the product.

66. At all times in its relationship with Dalmatia, Lancaster was obligated to keep information about Dalmatia's recipe and manufacturing process confidential and not to use that information for the benefit of anyone other than Dalmatia.

VIII. Dalmatia and Lancaster's Predecessor Enter Into a Manufacturing Agreement.

67. As the research and development phase was nearing an end, and after a significant amount of negotiating, Dalmatia and Beanies entered into a Product Manufacture and Supply Agreement dated July 16, 2008 (the "Manufacturing Agreement").

68. Section 2.8(a) of the Manufacturing Agreement, entitled "Noncompetition," provides, in part:

> During the Term of this Agreement and for a period of two years thereafter or, upon termination of this Agreement by Beanies for a period of two years thereafter (the "Noncompetition Period,") Beanies shall not make manufacture, process, test, label, store, and/or sell the Product or any similar competitive fig spreads on its own account or for any customer in any manner or conduct any business which is in any way competitive with [Dalmatia] in the Territory (the "Noncompetition Restrictions"); . . .

69. Section 2.8(b) of the Manufacturing Agreement provides, in part:

> Upon the termination of this Agreement by [Dalmatia] other than for Cause, Beanies shall no longer be subject to the Noncompetition Restrictions; provided however, that Beanies shall be restricted from using the Formula in any way and shall also be restricted from selling to or otherwise contacting or utilizing any of [Dalmatia's] vendors, customers or packaging profile for the remainder of the Noncompetition Period. For the avoidance of doubt, the relaxation of the Noncompetition Restrictions in this subsection (b) is made so as to allow Beanies

> to fulfill as co-packer orders from unaffiliated Beanies' customers dealing in fig spreads with their own proprietary fig spread recipes. Notwithstanding the foregoing, if [Dalmatia] terminates the Agreement for Cause, then the Noncompetition Restrictions shall remain in place for the duration of the Noncompetition Period.

70. The Manufacturing Agreement excludes from the Noncompetition Restrictions only one fig preserves product that Beanies had been manufacturing for Dutch Valley under the Jake and Amos label. (*Id.* ¶ 2.8(a) and Ex. C.)

71. The Manufacturing Agreement defines the "Product" as fig spreads manufactured by Beanies for Dalmatia. (Manufacturing Agreement ¶ 1.2.) The "Term" of the Agreement began on July 16, 2008, and is renewed automatically from year to year unless terminated by either party at least 90 days before the end of a renewed term. (*Id.* ¶ 3.1.) The "Territory" is defined as "the entirety of the United States and Canada, its territories and possessions." (*Id.* ¶ 1.3.) The "Formula" is defined as the proprietary fig spread recipe described on Exhibit A of the Manufacturing Agreement. (*Id.* ¶ 1.1.)

72. The Manufacturing Agreement also contains an Intellectual Property section, which provides:

> [Dalmatia] retains all rights, title and interest to its Marks (as defined below). Any reproduction or distribution except as expressly permitted herein without [Dalmatia's] prior written approval is strictly prohibited. All trademarks, service marks, copyrights, trade names, trade dress, logos, symbols (the "Marks"), trade secrets, patents and patent applications and other proprietary rights used by [Dalmatia] in connection with the manufacturing, labeling, marketing, sale and distribution of the Products (collectively, the "Intellectual Property") are the exclusive property of [Dalmatia]. Beanies acknowledges that, except as expressly provided in Section 2.10, it shall not acquire any rights or licenses for the use of any of [Dalmatia's] Intellectual Property. All use of the Marks by Beanies shall solely insure to the benefit of [Dalmatia].

(Manufacturing Agreement ¶ 2.10.)

73. The Manufacturing Agreement also provides the following license to Beanies:

> [Dalmatia] grants to Beanies a limited, non-exclusive, royalty-free revocable license (the "License") within the Territory to utilize the Formula and the Marks solely in connection with the manufacture, packaging, and shipping of the Product exclusively for [Dalmatia], subject to the terms, conditions and restrictions set forth in this Agreement. Such License shall be terminable upon any default under this Agreement. Upon the end of the term of this Agreement or any earlier termination (described in Section 3.2), the License shall automatically terminate and Beanies shall have no right, title or interest in the Mark or Intellectual Property of [Dalmatia]. Beanies shall not have any right to use the Formula to produce the Product for anyone other than [Dalmatia].

(Manufacturing Agreement ¶ 2.11.)

74. The Manufacturing Agreement also provides that:

- Dalmatia had provided Beanies with "written formulations, specifications, process instructions, container quantity, plant certifications, packaging and labeling instructions," defined in the Agreement as the "Specifications" for the fig spread (*id.* ¶ 1.4);
- Prior to the beginning of production, Dalmatia funded the purchase of "certain equipment ... for Beanies to produce the Product (the 'Purchased Equipment')" and Beanies would maintain the Purchased Equipment for the term of the Agreement and would be required to return it at the end of the term (*id.* ¶ 2.3);
- Beanies would charge, and Dalmatia would prepay for the fig spread (*id.* ¶ 2.7 and Exh. B);
- Dalmatia would provide Beanies with "all labeling, consumer packaging and outer shipment packing for the [fig spread] (the 'Packaging Profile')," which is proprietary (*id.* ¶ 2.9);
- Beanies would "conform strictly with the formula, methods of manufacture, standards of quality and sanitation, canning, labeling, package design and packaging instructions and other specifications and instructions which [Dalmatia] shall furnish from time to time";
- The Agreement is binding upon and inured to the benefit of successors (*id.* ¶ 11.6); and
- The Agreement is governed by and construed under the laws of the Commonwealth of Massachusetts (*id.* ¶ 11.7).

IX. Lancaster Takes Over as Dalmatia's Manufacturer.

75. In or about September 2008, Beanies began full-scale manufacturing of Dalmatia's DALMATIA-brand fig spread at Beanies' facility located at 2320 Norman Road,

Lancaster, Pennsylvania, using the Formula, Specifications, Purchased Equipment and Packaging Profile.

76. In September 2008, Dalmatia received a fax and invoice from "Lancaster Fine Foods, Inc." directing it to pay for its fig spread by wire transfer to Lancaster's bank. The printed legend on the fax cover sheet from Lancaster said "Beanies of Lancaster" and was sent by Deb Brubaker, an employee of Beanies. The Lancaster invoice included an address, telephone number, fax number, e-mail and website address which were unchanged from Beanies' address, telephone number, fax number, e-mail (info@beaniesoflancaster.com) and website address (www.beaniesoflancaster.com).

77. On or about October 22, 2008, Lancaster sent Dalmatia a letter "officially" announcing that it had "acquired the assets of Beanies of Lancaster" and that this was "a continuation of a process" that had begun in spring 2008. The letter is signed by Michael Thompson, who is the President of Lancaster and the CEO of Earth Pride.

78. Lancaster never informed Dalmatia that Lancaster did not consider itself bound by the Manufacturing Agreement. Lancaster acted at all times as though it were operating under the Manufacturing Agreement.

79. At all times, Lancaster manufactured the fig spread at the same facility where Beanies had produced Dalmatia's product (at 2320 Norman Road, Lancaster, Pennsylvania), and Dalmatia continued working with the exact same staff at Lancaster that it had previously worked with when the company was Beanies.

80. Lancaster also continued to use the Formula Dalmatia provided to Beanies per the Manufacturing Agreement; continued to use the Specifications Dalmatia provided to Beanies per the Agreement; continued to use the jars Dalmatia had delivered to Beanies per the Agreement;

continued to use the Purchased Equipment Dalmatia had bought for Beanies per the Agreement; continued to use the Packaging Profile for the fig spread per the Agreement; and continued to charge the same prices to Dalmatia per the Agreement (with an agreed-upon surcharge for sugar).

81. Dalmatia continued to order and purchase fig spread from Lancaster under the Manufacturing Agreement until late October 2015.

82. Dalmatia never terminated the Manufacturing Agreement.

83. Lancaster never terminated the Manufacturing Agreement.

X. FoodMatch and Lancaster Unlawfully Conspire To Compete With Dalmatia.

84. On or about October 5, 2015, Dalmatia notified FoodMatch that it would be terminating the Distribution Agreement as of December 31, 2015, and switching to a new distributor in January 2016.

85. Panicked that it soon would be losing some of its best-selling products, FoodMatch set out to develop its own competing fig, orange fig and sour cherry spreads to replace the Dalmatia products. FoodMatch determined that, to successfully compete with Dalmatia's market-leading products, it needed to match Dalmatia's distinctive qualities, which set its products apart from all other fig preserves on the market. FoodMatch decided that it would launch the Divina products at the Winter Fancy Food Show, a trade show, which was scheduled to take place from January 17th to 19th, 2016.

86. FoodMatch initially went to a Greek company to begin developing recipes for its competing Divina fruit spreads. The Greek company produced multiple small batch samples, attempting unsuccessfully to match characteristics of Dalmatia's spreads.

87. Then, in late October, 2015, Defendant Philip Meldrum of FoodMatch and Defendant Michael Thompson of Lancaster met to discuss Lancaster manufacturing the Divina

fruit spreads. FoodMatch and Lancaster quickly reached an agreement that FoodMatch would become the exclusive distributor of fig and orange fig spreads manufactured by Lancaster for sale under FoodMatch's Divina brand.

88. At all times, all Defendants knew that Dalmatia had contracted with Defendant Lancaster to manufacture DALMATIA-brand fig spread.

89. As part of the deal between FoodMatch and Lancaster, FoodMatch required – and Lancaster agreed – that Lancaster would end its relationship with Dalmatia.

90. Lancaster also committed that it would meet FoodMatch's deadline to have fig and orange fig spreads ready for launch by mid-January. Lancaster designated its Director of Product Development Matthew Hunt, and FoodMatch designated its Corporate Chef Brett Greenberg, as the people primarily responsible for developing the Divina fig and orange fig spread recipes.

91. When they began working together, Mr. Hunt asked Mr. Greenberg for FoodMatch's fig spread formulation and information about the specifications FoodMatch desired. Mr. Greenberg informed Mr. Hunt that he did not have a formula or "any strict parameters."

92. He further directed Mr. Hunt that, "[t]he product we know and have become used to will be the basis for development." In other words, Mr. Greenberg told Mr. Hunt to base development of the Divina fig spread on Dalmatia's product.

93. Mr. Greenberg and FoodMatch relied on Lancaster's Mr. Hunt to create the Divina recipes and achieve FoodMatch's specifications for the product. Of course, having worked on product development and manufacture of Dalmatia's fig spread for more than eight

years, Mr. Hunt was intimately familiar with Dalmatia's formulations and manufacturing processes.

94. Mr. Hunt and Defendants Lancaster and Thompson did exactly what Defendants FoodMatch and Meldrum directed – they based the Divina fig spread recipes and manufacturing process on their knowledge of Dalmatia's confidential recipes and manufacturing process.

95. By exploiting Lancaster's knowledge of Dalmatia's trade secrets, Defendants Lancaster, FoodMatch, Thompson and Meldrum were able to produce Divina fig and orange fig spreads sharing the distinctive flavor, texture, and appearance of Dalmatia's products.

96. Defendant Lancaster under Defendant Thompson's direction and control began manufacturing Divina fig and orange fig spreads for Defendants FoodMatch and Meldrum in late 2015, while the Distribution Agreement between Dalmatia and Foodmatch was still in effect.

XI. FoodMatch Launches Its Divina Fig Spreads.

97. As planned, Defendants FoodMatch and Meldrum launched the Divina fig, orange fig and sour cherry spreads at the Winter Fancy Food Show in January 2016. But some of the Divina-brand products were distributed as early as January 1, 2016 – literally the day after the Distribution Agreement between Plaintiff and FoodMatch expired. The Divina products are available in the same packaging options offered by Dalmatia – retail and bulk.

98. Dalmatia representatives attending the Fancy Food Show learned that FoodMatch was aggressively and misleadingly marketing its Divina spreads to Dalmatia's customers, and had been doing so prior to the December 31, 2015, termination of the Distribution Agreement. Several of Dalmatia's largest customers reported that FoodMatch misrepresented to them that Dalmatia's spreads were discontinued, and offered them Divina spreads as replacements.

99. During the trade show, other Dalmatia customers informed Dalmatia that FoodMatch provided them with side-by-side taste test comparisons of Dalmatia and Divina

samples and, after establishing that they were comparable products, offered the Divina spreads at a significant discount to Dalmatia's price points.

100. Dalmatia learned that significant customers switched to FoodMatch's Divina spreads after being approached by FoodMatch and being courted with these false representations and unfair business practices.

101. Yet another customer informed Plaintiff's Ms. Magee at the Fancy Food Show that it had tested FoodMatch's fig spread "several months ago," and, going forward, would only be carrying the new spread, which was offered at a significant discount to the prices offered by Dalmatia.

102. Thus, Defendant FoodMatch, under Defendant Meldrum's direction and knowledge, had developed and promoted the Divina spreads while still acting as Dalmatia's distributor, notwithstanding the clear prohibition of such conduct in the Distribution Agreement.

103. Upon conducting taste tests, Dalmatia discovered that the Divina spreads share identical flavor profiles and consistencies with their Dalmatia counterparts, clearly indicating that FoodMatch's Divina spreads are utilizing Dalmatia's recipes and production processes.

XII. Lancaster and FoodMatch Manufacture and Sell Counterfeit DALMATIA Fig Spread Infringing Dalmatia's Trademarks.

104. While they were working together to make Divina brand fig spreads, FoodMatch and Lancaster – and their respective Presidents, Defendants Meldrum and Thompson – conspired to sell DALMATIA-brand fig spread, using Dalmatia's trademark and trade dress, without Dalmatia's authorization.

105. Specifically, Lancaster sold to FoodMatch, which in turn sold to sub-distributors and retailers in multiple states, jars of what purports to be DALMATIA fig spread that,

according to the “best by” dates and lot coding on the labels, were manufactured by Lancaster on October 26 and 27, 2015.

106. These products are identical in appearance to Dalmatia’s fig spread and use the DALMATIA trademark and Dalmatia’s jar configuration. Lancaster used labels and jars supplied by Dalmatia to manufacture the counterfeit goods.

107. However, these counterfeit products are of inferior quality to Dalmatia’s authorized products. In early November, Dalmatia notified Lancaster that the fig spread it produced on October 26 and 27, 2015, was rejected due to quality problems and was not to be released for shipment to FoodMatch.

108. Additionally, Lancaster manufactured and sold to FoodMatch, which in turn sold to sub-distributors and retailers in multiple states, jars of purported DALMATIA fig spread that, according to the “best by” dates and lot codes on their labels, were manufactured on November 13 and 16, 2015, after Dalmatia instructed Lancaster to halt all production. Dalmatia had directed Lancaster to stop manufacturing fig spread on November 5, 2015, due to concern about Lancaster’s quality control problems.

109. In addition, Lancaster has manufactured and sold to FoodMatch, which in turn sold to sub-distributors and retailers in multiple states, jars of purported DALMATIA fig spread that have no “best by” date or lot coding. Dalmatia never has authorized the sale of fig spread without such coding, which is essential for tracing product in the event of a recall.

110. All of these counterfeit DALMATIA products, which were rejected or unauthorized by Dalmatia, are now being sold in massive quantities by retailers across the country. There are likely additional lots of counterfeit DALMATIA fig spread on the market that Dalmatia has not yet discovered.

111. Lancaster never invoiced Dalmatia, and Dalmatia never paid Lancaster, for the fig spread Lancaster produced on October 26, October 27, November 13 or November 16.

112. Dalmatia never invoiced FoodMatch, and FoodMatch never paid Dalmatia, for the fig spread Lancaster produced on October 26, October 27, November 13 or November 16.

113. Rather, Lancaster and FoodMatch cut Dalmatia completely out of the loop and pocketed the profits from their sale of products using DALMATIA's trademarks.

114. Defendants Meldrum and Thompson personally directed and controlled the manufacture and sale of the counterfeit DALMATIA products.

115. Defendants did so with intent to destroy Dalmatia's reputation and business.

XIII. Defendants' Wrongdoing Is Causing Dalmatia Irreparable Harm.

116. With each day that passes, Defendants' wrongdoing is causing Dalmatia further irreparable harm.

117. Defendants' aggressive marketing of their offending products, targeting long-time Dalmatia customers has already left an indelible mark on Dalmatia's business. Dalmatia projected selling over 11,000 cases, collectively, of Original Fig Spread, Orange Fig Spread and Sour Cherry Spread in January 2016, based on similar sales for the month the past two years. However, as a direct result of Defendants' tactics, requiring Dalmatia to compete against its own recipes and counterfeits of its own products, offered at lower prices, Dalmatia sold only 3,566 cases this January, representing a decline in sales of approximately 68%.

118. The harm does not end there. Dalmatia has invested a tremendous amount of time and money developing its brand and product line and has worked tirelessly to gain the recognition it deserves as a premium supplier of fruit spreads. Dalmatia's reputation, built over the past sixteen years of business, for providing unique, high-quality fruit spreads is being

irreparably harmed by Defendants' sale of inferior quality counterfeit goods that consumers will believe were authorized by Dalmatia.

119. Defendants' unlawful acts have already resulted in real and tangible harm to Dalmatia's brand and goodwill as Dalmatia is losing customers to Defendants' unlawful Davina fig spread products which are essentially the same products, but at lower price points. By offering its offending products at a substantial discount, Defendants FoodMatch and Meldrum have captured shelf-space with Dalmatia's customers, effectively pushing Dalmatia spreads off the shelves of retailers. Indeed, FoodMatch has expressed to customers that this is its goal.

120. If Defendants are not immediately enjoined from their unlawful competition, Dalmatia's future is in immediate jeopardy, and, absent court intervention, is mere months away from going out of business.

COUNT I
AGAINST FOODMATCH AND LANCASTER
Misappropriation of Trade Secrets

121. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 120 as though fully set forth herein.

122. Dalmatia's recipes and production processes relating to its Original Fig Spread and Orange Fig Spread are proprietary trade secrets and Dalmatia has taken substantial measures to maintain their secrecy.

123. FoodMatch has misappropriated Dalmatia's trade secrets by exploiting Lancaster's confidential relationship with Dalmatia to create Divina brand fig and orange fig spreads derived from Dalmatia's trade secret recipes and production processes.

124. Lancaster has misappropriated Dalmatia's trade secrets by using its knowledge of Dalmatia's trade secret recipes and manufacturing processes to develop fig and orange fig spreads for FoodMatch.

125. As a direct and proximate result of the wrongful conduct of FoodMatch and Lancaster, Dalmatia has suffered and continues to suffer irreparable injury.

126. As a direct and proximate result of the wrongful conduct of FoodMatch and Lancaster, Dalmatia has suffered and continues to suffer money damages.

COUNT II
AGAINST FOODMATCH
Breach of Contract – Distribution Agreement

127. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 126 as though fully set forth herein.

128. On or about December 22, 2006, Dalmatia and FoodMatch entered into the Distribution Agreement, which is a valid and enforceable contract.

129. At all relevant times, Dalmatia performed its duties under the Distribution Agreement.

130. FoodMatch breached its obligations under the Distribution Agreement by using Dalmatia's proprietary manufacturing information, trade secrets, trademarks, and trade dress for its own benefit and without Dalmatia's approval.

131. FoodMatch also breached its obligations under the Distribution Agreement by manufacturing, selling and/or promoting its Divina line of competing fruit spreads during and after the term of the Distribution Agreement.

132. As a direct and proximate result of the wrongful conduct by FoodMatch, Dalmatia has suffered and continues to suffer irreparable injury.

133. As a direct and proximate result of the wrongful conduct by FoodMatch, Dalmatia has suffered and continues to suffer substantial money damages.

COUNT III
AGAINST FOODMATCH
Breach of Contract – FoodMatch Non-Disclosure Agreement

134. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 133 as though fully set forth herein.

135. On or about May 14, 2007, Dalmatia and FoodMatch entered into the FoodMatch Non-Disclosure Agreement, which is a valid and enforceable contract.

136. At all relevant times, Dalmatia performed its duties under the FoodMatch Non-Disclosure Agreement.

137. Defendant FoodMatch breached its obligations under the FoodMatch Non-Disclosure Agreement by using Dalmatia's proprietary trade secrets in the manufacture, sale and/or promotion of its Divina brand fig spread and orange fig spread.

138. As a direct and proximate result of the wrongful conduct by FoodMatch, Dalmatia has suffered and continues to suffer irreparable injury.

139. As a direct and proximate result of the wrongful conduct by FoodMatch, Dalmatia has suffered and continues to suffer substantial money damages.

COUNT IV
AGAINST ALL DEFENDANTS
Unfair Competition

140. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 139 as though fully set forth herein.

141. By their wrongful acts, Defendants, in bad faith, knowingly misappropriated Dalmatia's confidential and proprietary information for use in their businesses through the manufacture, sale and/or promotion of Divina brand fig spread and orange fig spread in competition with Dalmatia.

142. Defendants wrongfully used, for their own unfair commercial advantage, proprietary information that Dalmatia had developed through considerable expenditure of resources and effort.

143. Defendants also caused a likelihood of confusion through the distribution and sale of counterfeit DALMATIA products, bearing both Plaintiff's incontestable and federally registered DALAMTA mark and incontestable and federally registered jar configuration in competition with Plaintiff.

144. As a direct and proximate result of the wrongful conduct by Defendants, Dalmatia has suffered and continues to suffer irreparable injury.

145. As a direct and proximate result of the wrongful conduct of Defendants, Dalmatia has suffered and continues to suffer substantial money damages.

COUNT V
AGAINST LANCASTER AND EARTH PRIDE
Breach of Contract – Manufacturing Agreement

146. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 145 as though fully set forth herein.

147. On or about July 16, 2008, Dalmatia entered into the Manufacturing Agreement, which is a valid and enforceable contract, with Lancaster's and Earth Pride's predecessor.

148. At all relevant times, Dalmatia performed its duties under the Manufacturing Agreement.

149. The Manufacturing Agreement is binding on Lancaster and/or Earth Pride as successors in interest to Beanies.

150. Lancaster and/or Earth Pride breached the Manufacturing Agreement by manufacturing, processing, testing, labeling, storing, and/or selling similar competitive fig

spreads for FoodMatch and other customers and by conducting business competitive with Dalmatia.

151. Lancaster and/or Earth Pride breached the Manufacturing Agreement by using Dalmatia's trademarks and trade dress without Dalmatia's prior written approval.

152. Lancaster and/or Earth Pride breached the Manufacturing Agreement by using without Dalmatia's authorization, Dalmatia's trade secrets and other proprietary rights in connection with the manufacturing, labeling, marketing, sale and distribution of its fig spread.

153. Lancaster and/or Earth Pride breached the Manufacturing Agreement by using Dalmatia's Formula for the benefit of FoodMatch.

154. As a direct and proximate result of the wrongful conduct by Lancaster and/or Earth Pride, Dalmatia has suffered and continues to suffer irreparable injury.

155. As a direct and proximate result of the wrongful conduct by Lancaster and/or Earth Pride, Dalmatia has suffered and continues to suffer substantial money damages.

COUNT VI
AGAINST LANCASTER AND EARTH PRIDE
Breach of Contract – Beanies Non-Disclosure Agreement

156. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 155 as though fully set forth herein.

157. On or about May 21, 2007, Dalmatia entered into the Beanies Non-Disclosure Agreement, which is a valid and enforceable contract, with Lancaster's and Earth Pride's predecessor.

158. At all relevant times, Dalmatia performed its duties under the Beanies Non-Disclosure Agreement.

159. The Beanies Non-Disclosure Agreement is binding on Lancaster and/or Earth Pride as successors in interest to Beanies.

160. Lancaster and/or Earth Pride breached the Beanies Non-Disclosure Agreement by using Dalmatia's confidential information for purposes not authorized in the agreement, including by using Dalmatia's confidential information about its recipes and manufacturing processes to develop competing products for FoodMatch.

161. Lancaster and/or Earth Pride further breached the Beanies Non-Disclosure Agreement by disclosing confidential information about Dalmatia's recipes and manufacturing processes to FoodMatch.

162. As a direct and proximate result of the wrongful conduct by Lancaster and/or Earth Pride, Dalmatia has suffered and continues to suffer irreparable injury.

163. As a direct and proximate result of the wrongful conduct by Lancaster and/or Earth Pride, Dalmatia has suffered and continues to suffer substantial money damages.

COUNT VII
AGAINST DEFENDANTS FOODMATCH AND MELDRUM
Tortious Interference with Contract

164. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 163 as though fully set forth herein.

165. The Manufacturing Agreement and Beanies Non-Disclosure Agreement are valid contracts between Dalmatia and Lancaster.

166. FoodMatch and Meldrum knew that Dalmatia and Lancaster had a manufacturing contract and that Lancaster had agreed not to use or disclose Dalmatia's confidential information without Dalmatia's approval.

167. FoodMatch and Meldrum intentionally procured Lancaster's breach of these contracts without justification by hiring Lancaster to manufacture competing fig spreads for

FoodMatch, which were derived from Dalmatia's confidential recipe and manufacturing process information, and by inducing Lancaster to manufacture and sell fig spreads using Dalmatia's trademarks without Dalmatia's authorization.

168. Lancaster breached the contracts as stated in Counts V and VI above.

169. But for FoodMatch's and Meldrum's interference, Lancaster would not have committed these breaches because Lancaster could not have otherwise distributed the fig spreads it made using Dalmatia's trademarks and trade secrets.

170. As a direct and proximate result of the wrongful conduct by FoodMatch and Meldrum, Dalmatia has suffered and continues to suffer irreparable injury.

171. As a direct and proximate result of the wrongful conduct by FoodMatch and Meldrum, Dalmatia has suffered and continues to suffer substantial money damages.

COUNT VIII
AGAINST FOODMATCH, LANCASTER, MELDRUM AND THOMPSON
Trademark Infringement and Unfair Competition in Violation of 15 U.S.C. Section 1114

172. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 171 as though fully set forth herein.

173. Dalmatia owns the federally registered, incontestable, trademarks DALMATIA for fig spread, Reg. No. 2,918,383, and an incontestable federal registration for a jar configuration for fig spread, Reg. No. 3,667,176. Dalmatia also owns common law rights in this mark and jar configuration on account of its long and continuous use in commerce and substantial advertising and sales of products bearing the mark and contain in the configuration.

174. Defendants are using Dalmatia's identical trademark and jar configuration in connection with the advertising, promotion, distribution and sale of fig spread without Dalmatia's authorization and with the specific intent to cause consumers and others in the trade

to believe that they are purchasing a genuine DALMATIA fig spread when in reality they are purchasing a counterfeit DALMATIA fig spread.

175. Defendants' unauthorized use of Dalmatia's trademark and trade dress jar configuration is likely to cause confusion, to cause mistake and to cause deception that Defendants' products come from or are endorsed, approved or licensed by Dalmatia.

176. Defendants' wrongful conduct has deprived Plaintiff of, among other things, the right to control the reputation and goodwill associated with its trademarks and jar configuration.

177. Unless Defendants are enjoined from engaging in their wrongful conduct, Plaintiff will suffer further irreparable injury and harm, including to its goodwill and reputation, for which it has no adequate remedy at law.

COUNT IX
AGAINST FOODMATCH, LANCASTER, MELDRUM AND THOMPSON
Trademark Counterfeiting In Violation of 15 U.S.C Section 1114

178. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 177 as though fully set forth herein.

179. Dalmatia owns the federally registered, incontestable, trademarks DALMATIA for fig spread, Reg. No. 2,918,383, and an incontestable federal registration for a jar configuration for fig spread, Reg. No. 3,667,176.

180. Defendants are using a spurious trademark and trade dress jar configuration that is identical to Dalmatia's DALMATIA mark and trade dress jar configuration in connection with their advertising, promotion, distribution and sale of the identical products identified in Plaintiff's registrations, i.e., fig spread, without Dalmatia's authorization, which constitutes trademark counterfeiting in violation of 15 U.S.C. § 1114(a).

181. Defendants' wrongful conduct has deprived Plaintiff of, among other things, the right to control the reputation and goodwill associated with its trademarks.

182. Unless Defendants are enjoined from engaging in their wrongful conduct, Plaintiff will suffer further irreparable injury and harm, including to its goodwill and reputation, for which it has no adequate remedy at law.

COUNT X
AGAINST FOODMATCH, LANCASTER, MELDRUM AND THOMPSON
Violations of The Racketeering Influenced And Corrupt Organizations Act
(18 U.S.C. Section 1962(c))

183. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 182 as though fully set forth herein

184. Defendants FoodMatch and Meldrum, on the one hand, and Defendants Lancaster and Thompson, on the other hand, have formed an enterprise that is engaged in a pattern of racketeering activity.

185. Defendants FoodMatch and Meldrum, on the one hand, and Defendants Lancaster and Thompson, on the other hand, have used the United States Mails in furtherance of a scheme to destroy Plaintiff's business by defrauding customers into purchasing tens of thousands or hundreds of thousands of counterfeit DALMATIA products based on a pattern of racketeering consisting of mail fraud and trafficking in counterfeits of Plaintiff's trademarks.

186. The pattern of racketeering is an intentional and knowing series of acts of mail fraud and counterfeiting that started on or about October 2015 and continues to this day.

187. The pattern of racketeering has diverted customers from Plaintiff's genuine DALMATIA products to Defendants' counterfeit DALMATIA products and is intended to destroy Plaintiff's business.

188. Since at least October 2015, Defendants FoodMatch and Meldrum, on the one hand, and Defendants Lancaster and Thompson, on the other hand, have violated 18 U.S.C. section 1962(c), and have conspired to violate 18 U.S.C. section 1962(c), by, among other things, a pattern of racketeering activity, including mail fraud and trafficking in counterfeit DALMATIA marks.

189. On account of the violations of 18 U.S.C. section 1962(c) by Defendants FoodMatch and Meldrum, on the one hand, and Defendants Lancaster and Thompson, on the other hand, Plaintiff has suffered actual economic harm, including lost sales, and its reputation and goodwill have been substantially and irreparably damaged.

190. Unless Defendants are permanently enjoined, they will continue to engage in a pattern of racketeering activity, including mail fraud and trafficking in counterfeit DALMATIA trademarks in violation of 18 U.S.C. section 2320.

THE WANTONNESS OF DEFENDANTS' WRONGFUL CONDUCT

191. Plaintiff repeats and realleges each and every allegation set forth in paragraphs 1 through 190 as though fully set forth herein.

192. Defendants' conduct alleged herein is intentional, outrageous and exhibits a high degree of moral culpability. Defendants have acted with a fraudulent motive and have consistently, willfully and wantonly disregarded Dalmatia's rights.

193. Defendants conspired to harm Dalmatia by unfairly competing against it. Defendants have used and continue to use Dalmatia's confidential and proprietary trade secret recipes and production processes and/or information derived directly therefrom in developing FoodMatch's Divina fruit spreads.

194. Defendants FoodMatch and Meldrum concealed their willful misconduct by falsely representing that they had developed their fig and orange fig spread independently in Greece.

195. Defendants also purposefully sought to harm Dalmatia's business and reputation by manufacturing and selling counterfeit fig spread using Dalmatia's trademarks. They intentionally sold counterfeit products of inferior quality to harm Dalmatia's goodwill, while simultaneously flooding the market to suppress demand for Dalmatia's authentic products. They did this for profit and to create a competitive advantage for the Divina products.

196. Likewise, FoodMatch acted with a fraudulent motive in deceiving Dalmatia's customers into believing that Dalmatia discontinued its Original Fig Spread, Orange Fig Spread and Sour Cherry Spread, and in otherwise misleadingly and aggressively targeting Dalmatia's customers in an effort to drive Dalmatia out of business.

197. Defendants' conduct was knowingly, intentional, willfully and wantonly reckless, malicious, and/or grossly negligent, which justifies an award of punitive damages, in addition to compensatory damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Dalmatia respectfully requests this Court to:

(i) Permanently enjoin FoodMatch and Lancaster (including their officers, directors, employees, agents, and all persons acting in concert with them) from using or benefiting, directly or indirectly, from the use of Dalmatia's confidential and proprietary trade secret information, including, but not limited to, preventing any further manufacture, sale and/or promotion of Divina brand fig spread and orange fig spread;

(ii) Order that Defendants (including their officers, directors, employees, agents, and all persons acting in concert with them) immediately return all of Dalmatia's confidential and proprietary trade secret information in their possession, custody or control;

(iii) Order that Defendants (including their officers, directors, employees, agents, and all persons acting in concert with them) immediately destroy and certify under oath the destruction of all materials derived in any way directly or indirectly, in whole or in part, from any of Dalmatia's confidential and proprietary trade secret information, including, but not limited to, the Divina brand line of fig spread and orange fig spread;

(iv) Preliminarily and permanently enjoin Defendants from use of the DALMATIA trademark and Dalmatia's jar configuration or of any mark or trade dress confusingly similar to Dalmatia's;

(v) Order the seizure or delivering up to Plaintiff's counsel of all counterfeit DALMATIA products in Defendants' possession, custody or control, as well as all means that may be used by Defendants to engage in further trademark counterfeiting or infringement;

(vi) Order Defendants to recall all counterfeit DALMATIA products at their own expense and offer full refunds to all affected customers;

(vii) Order Defendants to recall all Divina-brand fruit spreads at their own expense and offer full refunds to all affected customers;

(viii) Permanently enjoin Defendants from otherwise engaging in acts, either directly or through other entities, of counterfeiting, racketeering activity, trademark infringement, trade secret infringement or unfair competition;

(ix) Order Defendants to pay Dalmatia compensatory damages in an amount to be proven at trial;

(x) Order Defendants to pay prejudgment and post judgment interest under New York law;

(xi) Order Defendants to disgorge all unjust enrichment;

(xii) Order Defendants to pay punitive damages in the maximum amount permitted by law;

(xiii) Order Defendants to pay statutory damages for trademark counterfeiting in the maximum amount permitted under the federal Lanham Act, which is $4 million dollars for use of two "counterfeit" marks;

(xiv) Order Defendants to pay costs, prejudgment and post judgment interest and attorney's fees for violations of the federal Lanham Act, 15 U.S.C. section 1051 *et seq.* and the federal Racketeering and Corrupt Organizations Act,18 U.S.C. section 1962 *et seq;*

(xv) Order Defendants to pay treble damages and treble unjust enrichment profits for violations of the federal Lanham Act, 15 U.S.C. section 1051 *et seq.* and the federal Racketeering and Corrupt Organizations Act 18 U.S.C. section 1962 *et seq.*;

(xvi) Order corrective advertising in a form that is acceptable to the Court and Plaintiff; and

(xvii) Order such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands a trial by jury on all counts of its First Amended Complaint so triable.

March 25, 2016

Respectfully submitted,

/s/ *Lauren E. Handel*
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